

S-5174

1 Amend House File 2109, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting clause
4 and inserting:

5 <Section 1. NEW SECTION. 142B.1 Definitions.

6 As used in this chapter, unless the context
7 otherwise requires:

8 1. "*Electronic smoking device*" means any product
9 containing or delivering nicotine or other substance
10 intended for human consumption that can be used by a
11 person to simulate smoking including through inhalation
12 of vapor or aerosol from the product. "*Electronic*
13 *smoking device*" includes any component part of such
14 product whether or not sold separately. "*Electronic*
15 *smoking device*" does not include any product that
16 has been approved by the United States food and drug
17 administration for sale as a tobacco cessation product
18 and is being marketed and sold solely for that approved
19 purpose.

20 2. "*Retail permit*" means a permit issued pursuant
21 to section 453A.13 or 453A.47A to retailers of
22 cigarettes or tobacco products.

23 3. "*Retailer*" means any person in this state who
24 sells, distributes, or offers for sale for consumption
25 or possesses for the purpose of sale for consumption,
26 electronic smoking devices irrespective of quantity or
27 amount or the number of sales.

28 Sec. 2. NEW SECTION. 142B.2 Retail permits
29 required.

30 1. It shall be unlawful for a person other than
31 a holder of a retail permit to act as a retailer and
32 sell, distribute, or offer for sale electronic smoking
33 devices at retail under this chapter.

34 2. A retailer shall not sell, distribute, or
35 offer for sale any electronic smoking device until
36 an application has been filed and the fee prescribed
37 paid for a retail permit and until such retail permit
38 is obtained and only while such retail permit is not
39 suspended, unrevoked, or unexpired.

40 3. The provisions of chapter 453A applicable to
41 retail permit holders including but not limited to
42 section 453A.13, 453A.22, 453A.47A, and 453A.50 shall
43 also apply to retailers under this chapter, with the
44 exception of the application to electronic smoking
45 devices of requirements relating to the imposition of
46 a tax on and the affixing of stamps to cigarettes or
47 tobacco products.

48 Sec. 3. NEW SECTION. 142B.3 Access to electronic
49 smoking devices — compliance checks — manner of sale
50 — samples — marketing — penalties.

1 1. A person shall not sell, give, or otherwise
2 supply any electronic smoking device to any person
3 under eighteen years of age.

4 2. A person under eighteen years of age shall not
5 use, possess, purchase, or attempt to purchase any
6 electronic smoking device.

7 3. A retailer shall not sell or offer for sale
8 electronic smoking devices through the use of a
9 self-service display or a vending machine.

10 4. A retailer shall not give away electronic
11 smoking devices at any time in connection with the
12 retailer's business or for promotion of the business
13 or device.

14 5. A person shall not engage in commercial nonsale
15 distribution of electronic smoking devices. For the
16 purposes of this subsection, "*nonsale distribution*"
17 means the distribution to the public of electronic
18 smoking devices through the redeeming of a coupon or
19 use of a rebate or other promotional offer that results
20 in a person receiving such product for free or at a
21 nominal cost.

22 6. A person shall not market an electronic smoking
23 device in any outdoor area within five hundred feet
24 of a playground, school, high school, or any other
25 place used by persons under eighteen years of age for
26 recreational, educational, or other purposes.

27 7. A person shall not market electronic smoking
28 devices in the state in any place of business unless
29 the business ensures that no person younger than
30 eighteen years of age is present or permitted to enter
31 at any time.

32 8. Liquid refills for electronic smoking devices
33 shall only be sold in child resistant packaging.

34 9. Possession of an electronic smoking device
35 by an individual under eighteen years of age does
36 not constitute a violation under this section if the
37 individual under eighteen years of age possesses the
38 electronic smoking device as part of the individual's
39 employment and the individual is employed by a person
40 who holds a valid retail permit.

41 10. a. The alcoholic beverages division of the
42 department of commerce, a county, or a city may
43 directly enforce subsections 1 and 2 in district court
44 and initiate proceedings pursuant to section 453A.22
45 before a permit-issuing authority which issued the
46 retail permit against a retail permit holder violating
47 this section.

48 b. Payment and distribution of court costs, fees,
49 and fines in a prosecution initiated by a city or
50 county relating to subsection 1 or 2 shall be made as

1 provided in chapter 602 for violation of a city or
2 county ordinance.

3 c. If a county or a city has not assessed a penalty
4 as provided in section 453A.22, subsection 2, for a
5 violation of subsection 1, within sixty days of the
6 adjudication of the violation, the matter shall be
7 transferred to and be the exclusive responsibility of
8 the alcoholic beverages division of the department
9 of commerce. Following transfer of the matter, if
10 the violation is contested, the alcoholic beverages
11 division of the department of commerce shall request
12 an administrative hearing before an administrative
13 law judge, assigned by the division of administrative
14 hearings of the department of inspections and appeals
15 in accordance with the provisions of section 10A.801,
16 to adjudicate the matter pursuant to chapter 17A.

17 d. The provisions of section 453A.4 relating
18 to seizure of a false or altered driver's license
19 or nonoperator's identification card shall apply
20 to retailers and employees of retailers under this
21 chapter.

22 e. The alcoholic beverages division of the
23 department of commerce shall enhance and utilize the
24 tobacco compliance employee training program developed
25 pursuant to section 453A.5 to assess compliance with
26 subsections 1 and 2 by employees and prospective
27 employees of retailers. Civil penalties assessed under
28 section 453A.22 for violations of this subsections 1
29 and 2 shall be deposited in the tobacco compliance
30 employee training fund created in section 453A.2.

31 **Sec. 4. NEW SECTION. 142B.4 Penalties.**

32 1. a. (1) A person, other than a retailer, who
33 violates section 142B.3, subsection 1, is subject to
34 the same penalties applicable to a violation of section
35 453A.2, subsection 1.

36 (2) An employee of a retailer who violates section
37 142B.3, subsection 1, is subject to the same penalties
38 applicable to a violation of section 453A.2, subsection
39 1.

40 b. A person who violates section 142B.3, subsection
41 2, is subject to the same penalties applicable to
42 violations of section 453A.2, subsection 2.

43 c. (1) A person shall not be guilty of a violation
44 of section 142B.3, subsection 1 or 2, if conduct that
45 would otherwise constitute a violation is performed to
46 assess compliance with electronic smoking device laws
47 if any of the following applies:

48 (a) The compliance effort is conducted by or under
49 the supervision of law enforcement officers.

50 (b) The compliance effort is conducted with the

1 advance knowledge of law enforcement officers and
2 reasonable measures are adopted by those conducting
3 the effort to ensure that use of electronic smoking
4 devices by individuals under eighteen years of age does
5 not result from participation by any individual under
6 eighteen years of age in the compliance effort.

7 *d.* For the purposes of paragraph "*c*", "*law*
8 *enforcement officer*" means a peace officer as defined
9 in section 801.4 and includes persons designated under
10 section 142B.3, subsection 10, to enforce this section.

11 2. *a.* A retailer who violates section 142B.3,
12 subsection 3, is subject to the same penalties
13 applicable to a violation of section 453A.36,
14 subsection 6, or section 453A.36A, as applicable.

15 *b.* A retailer who willfully violates section
16 142B.3, subsection 1, or who violates another
17 provision of this chapter, is subject to the applicable
18 provisions of section 453A.22 for violations of section
19 453A.2 or other provisions of chapter 453A.

20 *c.* A retailer or employee of a retailer who
21 violates section 142B.3, subsection 1 or 3, is subject
22 to the provisions of section 453A.22 applicable to
23 a violation of section 453A.2 or section 453A.36,
24 subsection 6.

25 *d.* A retailer of an employee who violates section
26 142B.3, subsection 1, is subject to the provisions of
27 section 453A.22, subsection 3.

28 *e.* Section 453A.22, subsections 5, 6, and 7 shall
29 also apply to the suspensions or revocations of retail
30 permits resulting under this subsection.

31 3. Retailers shall be subject to other penalties
32 specified under chapter 453A including those specified
33 for certain violations pursuant to section 453A.31,
34 453A.37, and 453A.47A applicable to retail permit
35 holders.

36 **Sec. 5. NEW SECTION. 142B.5 Implementation,**
37 **application, and enforcement.**

38 For the purposes of implementation, application, and
39 enforcement of this chapter, nothing in this chapter
40 shall be construed to supersede the jurisdiction of
41 any city, county, township, school district, or other
42 political subdivision to adopt and enforce any local
43 law or regulation that is at least as restrictive as
44 those imposed under this chapter.>

45 2. Title page, lines 1 and 2, by striking <vapor
46 products and alternative nicotine products> and
47 inserting <electronic smoking devices>

JOE BOLKCOM
